

**WAUKESHA COUNTY  
MINUTES OF THE PARK AND PLANNING COMMISSION  
ADMINISTRATION CENTER, ROOM AC 255/259  
THURSDAY, MARCH 7, 2013, 1:00 P.M.**

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**CALL TO ORDER**

Mr. Peregrine, Chairperson, called the meeting to order at 1:00 p.m.

Commission

Members Present:

Robert Peregrine  
Walter Kolb

James Siepmann  
Fritz Ruf

Pat Haukohl  
William Mitchell

Commission

Members Absent:

Gary Goodchild

Staff

Members Present:

Jason Fruth, Planning and Zoning Manager  
Dale Shaver, Parks and Land Use Director  
Monica Walrath, Corporation Counsel  
Kim Haines, Waukesha County Corporation Counsel  
Amy Barrows, Senior Land Use Specialist  
Elfriede Sprague, Clerk Typist III

Guests Present:

Brett Meili:	PO-12-OCOT-18 Bertrand's On the Point
Peter Puestow:	PO-12-OCOT-18 Bertrand's On the Point
Vern Voelker:	PO-12-OCOT-18 Bertrand's On the Point
Rowland Morrison:	PO-12-OCOT-18 Bertrand's On the Point
Mike Bertrand:	PO-12-OCOT-18 Bertrand's On the Point
David Huibregtse:	PO-12-OCOT-18 Bertrand's On the Point
Jerry Newman	Town of Lisbon Plan Commission and Board

**CORRESPONDENCE**

None.

**MEETING APPROVAL**

• **2013 WCCA Spring Conference**

April 3 through 5, 2013, Stoney Creek Inn, 1100 Imperial Avenue, Mosinee, WI 54455

*Mr. Mitchell moved, seconded by Mr. Siepmann and carried unanimously for approval for any Commissioner to attend the WCCA Conference.*

**MINUTES**

Approval of the February 21, 2013, Minutes.

*Mr. Siepmann moved, seconded by Mrs. Haukohl and carried unanimously for approval of the February 21, 2013, Minutes.*

**PUBLIC COMMENT**

*Roland Morrison, N52 W35009 Lake Drive, Oconomowoc* (regarding PO-12-OCOT-18 Bertrand's On the Point), introduced himself and noted that in the Memorandum, Staff indicated that there have not been any noise complaints regarding the Bertrand property. He stated that in the past several years, he has personally called the police twice and they indicated they were responding to other emergency items and would respond as soon as possible; they never responded back. In another instance, his wife personally called Mr. Bertrand asking him to turn down the band noise and felt he answered with a "coy" remark. He noted that he felt there "wasn't any good mechanism in place when the police are "too busy" to respond to noise complaints.

***Peter Puestow, N52W35021 Lake Dr., Oconomowoc, (regarding PO-12-OCOT-18 Bertrand's On the Point)***, introduced himself and said he lives across the street from Mr. Bertrand. He pointed out to the Commission that there was an error on Page 2 of the Memorandum stating no food or drink shall be served outside after 10:00 p.m. Saturday and Sunday and stated Sunday was written twice. He felt the intent was to be Friday and Saturday. He had some concerns regarding the landscaping and stated he has spoken to a landscaper about salt tolerant species. He presented a landscape plan showing recommended plantings, their height and a possible flower bed along the current wall. He stated he has spoken to Mr. Bertrand about wanting to help with the plantings and that he would be willing to pay for half of putting in the shrubbery. He also indicated the Staff is recommending vegetative screening between the turnaround and the road, extending as far east along W. Lake Dr as practicable. He would like to see it extended to include between the turnaround and the lake.

***Vern Voelker, N52 W34999 Lake Dr., Oconomowoc, (regarding PO-12-OCOT-18 Bertrand's On the Point)***. Mr. Voelker stated he lives across the street in a house he has owned for over 40 years. When he moved in, this was just a neighborhood bar with lots of trees. He has a problem with all the vegetation/trees that has been cleared from the property and asked why Mr. Bertrand was not required to replace any of it. When he cut down a tree last year, he was required to get a permit and now has to replace it. He is concerned about the value of his property and stated the neighbors concerns need to be addressed.

***David Huibregtse, W349N5225 Point Comfort Dr., Oconomowoc, (regarding PO-12-OCOT-18 Bertrand's On the Point)***, introduced himself and stated he owns the property to the northeast that abuts the parking lot by the fence. He indicated he has a large runoff problem from the Bertrand property and would like the Staff to make sure it is addressed. He stated that at one time, there were trees there that were removed and now there are no plantings between the fence line and his property. He stated at the Town meeting he volunteered to help cover some of the cost of replanting the area. He noted that the other side of his property has evergreen trees that are dying from the bottom up. He has planted salt resistant vines and commented they are covering the dead branches and filling in nicely, so there are plants available that grow in the acidic soil.

Mr. Huibregtse also commented that with the smoking ban people will go outside to smoke, after the close of serving time. He recommended Mr. Bertrand place signs on outside doors stating that drinks cannot be taken outside while smoking. The point is being missed, if the report just says during serving. People will not stay outside as long if they cannot take their drinks with them. His last concern is regarding neighbor notification. With no need for a Conditional Use Permit in the future, how will the neighbors know when Mr. Bertrand is applying for changes to his Plan of Operation. Without notification, they will not be able to voice their concerns or objections. He would like the County and Town to hold Mr. Bertrand to the approved Plan of Operation for a year or two, so that the neighbors do not have to return in the next months to voice their concerns.

***Brett Meili, W350N5302 Road B, Oconomowoc, (regarding PO-12-OCOT-18 Bertrand's On the Point)***, introduced himself and said he lives directly across the water from the bar. He stated he supports the decibel level change and the change in the hours of operation; however he wants to reiterate the issues about the outside noise. He feels it is a huge problem with people going outside at midnight and yelling with no respect for the neighbors. He would also ask that a sign be placed saying that no drinks be allowed outside after 9 p.m. or 10 p.m. Patrons should not be allowed to sit outside till all hours as sound carries across the water. In regards to the landscaping, he would also like to see screening by the lake.

• **Consideration of the Year 2013 Requests for Amendments to the Comprehensive Development Plan for Waukesha County**

1. In the Town of Lisbon, the following request is being made:

- A. ***The Town of Lisbon Plan Commission and Board***, W234 N8676 Woodside Road, Lisbon, WI 53089, requests (vacant) property owned by John and Joseph Cook, c/o Don Brue, 997 Woodview Court, Slinger, WI 53085, located in part of the SE ¼ of Section 35, T8N, R19, Town of Lisbon (Tax Key No. LSBT 0284.998), be amended from the Governmental and Institutional category to the Industrial category.

Mr. Fruth pointed out the location of the property on the south side of C.T.H. “K”, east of S.T.H. 74 on the aerial photograph, in the Town of Lisbon. He stated the property is a vacant parcel that is part of a former landfill site, which is more than three years tax delinquent. In an effort to get the property back on the tax rolls as a viable property, it is standard practice to have the Waukesha County Environmental Health Division conduct an environmental review of any property the County may take ownership of in the future. This is to ensure the County is not accepting property that might contain liabilities and environmental hazards. Mr. Todd, our Hazardous Materials Coordinator did the equivalent of a Phase I Environmental Assessment of the property, minus a site visit as he has been unable to establish contact with the owner of the property. His investigation generally revealed that the site contains by-products from the quarry across the street and some general refuse that was dumped on the site. The Town has agreed to take ownership of the Plan Amendment application with the intent being that the property be placed into an appropriate land use category so that an adjacent property owner or potential buyer can purchase it and utilize it for similar industrial uses, such as the ones that exist in the immediate area.

Mr. Fruth pointed out the surrounding land uses and identified them as Commercial, Industrial and Government and Institutional. The lands are currently planned in the Governmental and Institutional category and the County Dept. of Public Works had indicated no need for additional lands relative to their facility to the east. . The request from the Town is to place the property into the Industrial category, which would match some of the adjacent lands to the south. The current zoning is B-3 General Business District, so any change to an industrial use would still require a rezone. At that time, it will be up to the Town to further consider the environmental constraints on the property.

*After discussion, Mrs. Haukohl moved, seconded by Mr. Ruf, and carried unanimously for approval, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.*

• **SZ-1746 (Text Amendments to the Waukesha County Shoreland and Floodland Protection Ordinance)**

Mr. Fruth indicated the request is for text amendments to the Waukesha County Shoreland and Floodland Protection Ordinance relating to the modernizing and updating of all County zoning maps. The text changes include a number of revisions to the FEMA map panels that govern the 100 year floodplain and it also includes a direct text reference to several dam failure studies that are part of the County’s regulatory floodplain area. The list of studies had been contained in Section 6(b) of the Ordinance. Staff is proposing to relocate the full list of floodplain studies to the back of the Shoreland Ordinance so that the addition of new studies over time does not affect the page numbering of the entire ordinance, which will save paper and expense. There are no text changes to the Zoning Code; it is solely a change to the Shoreland and Floodland Protection Ordinance.

Mrs. Haukohl asked if after the updates, was there was a net gain or loss of wetlands and Environmental Corridor. Mr. Fruth replied there is a net gain in the acreage zoned Environmental Corridor (EC) including the Isolated Natural Resource Areas (INRA). Some of the Town maps had not yet been modernized and did not have EC zoning established, which added to the net gain. The County calculated approximated 1,000 acres of INRA,

which were added to the EC category. He also stated that lands both came in and out of the C-1 District because of the incorporation of new wetland and floodplain data.

*After discussion, Mr. Mitchell moved, seconded by Mr. Ruf and carried unanimously for approval, in accordance with the “Staff Report and Recommendation”.*

• **SCZ-1746A (Countywide Zoning Map Amendments)**

Mr. Fruth indicated the request is for map amendments for the purpose of modernizing and updating all County zoning maps.

Mr. Fruth stated map modernization was initiated with the purpose of adding new natural resource inventories, particularly the most current EC inventories, recent floodplain mapping (2008) with amendments, dam failure studies and the 2005 SEWRPC/DNR wetland inventory. Mr. Fruth referred to Mrs. Haukohl’s question regarding what was the net gain. Mr. Fruth explained it went both ways. Some areas that were designated as wetland/floodplain or EC have been removed from the classification. Conversely, there are some new areas that are now mapped as such. A large amount of the FEMA mapping did not result in significant change.

Mr. Fruth continued that the modernization allowed the maps to be created in a digital format, making the entire County zoning data layers accessible via the County Internet Mapping Site (IMS). Mr. Fruth proceeded to demonstrate the County GIS site and the ability to link with many different documents, ordinances and mapping information. He explained there have been two changes since the public hearing. Staff had a call from a person in the Town of Lisbon, who was able to produce a recent navigability determination which slightly changed a jurisdictional boundary there. The other change was a minor edit to the Town of Waukesha map.

Mr. Fruth referenced a letter from Jeff Herrmann, Town of Genesee Planner, expressing some concern about the mapping of the INRA in the Town of Genesee. Mr. Herrmann explained the Town has numerous lots that were created in the 1970’s that never had EC zoning delineated on them. The Town felt the new regulations could possibly impede a property owner from building an accessory structure on this property. He noted that most of these lots are three acres in size. The Town asked if the developed natural resource parcels could be removed from the maps.

Mr. Fruth explained he has had conversations with Mr. Herrmann and plans to meet with him to work on possible Ordinance amendment language relative to EC standards. Mr. Fruth commented Staff feels the existing district language does work at present, even for developed smaller INRA parcels. However, Staff does feel that the language can be further improved. Mr. Fruth identified several parcels in the Town of Genesee on the GIS that have been identified by SEWRPC as INRA. He added that he asked SEWRPC if they mapped smaller, pre-existing parcels differently. SEWRPC replied that they make no attempt to differentiate INRA’s based on when the land division occurred or when the house was built. The mapping is based on the SEWRPC criteria for EC delineation. Mr. Fruth continued explaining that INRA’s have to be at least 5 acres; generally they are upland woods and sometimes contain unique terrain and topography. It appears that when SEWRPC did the mapping, they took into consideration the parcels that were developed and were conservative in their mapping. They identified the back yard areas that are contiguous blocks of woods. Mr. Fruth explained the EC standards state that when a lot is split between an EC District and a non-environmental corridor district, the disturbance must occur outside of the EC District. On a parcel that is zoned entirely EC, there is an allowance of 15% for disturbance. On five acre parcels, 15% of disturbance would be about  $\frac{3}{4}$  of an acre. On a three acre lot, the amount of allowable disturbance would be about one-half acre. On most of the new subdivision lots within the urban parts of the County that are about one-half acre, there have not been any problems building large, 5,000+ sq. ft. homes. The County is now looking to complete the mapping of Environmental Corridors. Currently the County is split, parts of the EC are formally protected with zoning and the other parts are not protected. The County and Town of Genesee plan both recommend preservation of INRA and EC areas.

Mr. Fruth stated that Staff would like to work with the Town of Genesee to draft some considerations to give property owners the ability to make minor encroachments into the EC District on developed lots. There are small parcels that do not comply with the regulations and there needs to be allowances made for them. The County would like to work with them to allow small additions or changes to their homes. Mr. Fruth noted that SEWRPC has designated roughly 1,000 acres within the County's jurisdictional area as INRA. The Town of Genesee has about 400 acres and of that and approximately half are already developed. Mr. Mitchell asked if the County felt the SEWRPC mapping was completed to Staff's satisfaction. Mr. Fruth indicated that Staff did make some corrections and noted that Staff will pass other concerns onto SEWRPC, as they are working on the 2010 inventory.

Mr. Siepmann expressed concern about designating INRA on existing parcels and how it would affect the property owner. He asked if they received notification that this mapping was taking place, because now they have restrictions that they did not have before. Mr. Fruth used the GIS to demonstrate a historical view of several properties, which indicated that even though there were no restrictions in place previously, most of the land owners did preserve sensitive areas. He noted that SEWRPC's conservative mapping approach already provides most landowners with an acre or more that is outside of the EC that can be disturbed. SEWRPC has done an inventory and determined that EC areas warrant protection. If these areas were not protected with zoning, someone could cut down all the vegetation on wooded property. Mr. Kolb commented he would hate to see any more restrictions placed on the property owners and take away their rights to develop by adding their properties to the EC zoning.

Mr. Fruth explained that EC zoning has been in place for a long time. Of the four towns subject to County zoning, Ottawa, Oconomowoc, Vernon and Genesee, three of the towns have had EC zoning since the 1990's. The Town of Genesee is the only Town that does not have EC zoning mapped. Oconomowoc and Vernon already have most INRA's zoned EC. Mr. Kolb commented that the County is adding more corridors because of adding Genesee. Mr. Fruth explained the reason Genesee is being added is because the Town Plan, County Development Plan and the SEWRPC and Regional Land Use Plan call for the preservation and protection of EC and INRA's. There is no mention in the Town or County Plan that says developed or undeveloped EC or INRA parcels should be treated differently. Mr. Kolb asked if the Town of Genesee had objections to the zoning.

Mr. Fruth replied that he has spoken with Mr. Herrmann to discuss how the Ordinance could be refined to satisfy his concerns. He seems to be comfortable that the Town and County can work out any issues.

Mr. Shaver added that the Staff had some of the same concerns as Mr. Herrmann has regarding the issues in the Code, so it is in the County's interest to get them fixed as well. The Town is not the only entity that needs to work with citizens that want to make improvements, the County does also. Right now the mapping needs to be approved and then Staff and Mr. Herrmann will work together to make amendments to the Code. The amendments will affect all the Towns, not just the Town of Genesee.

Mr. Mitchell asked Mr. Siepmann if his question was answered. He replied he was comfortable with the mapping and the fact that the Staff would be working on text amendments. He encouraged the Staff to complete the amendments and enact them quickly, so that if a petitioner does wish to build a garage between now and then, there are no problems.

***After discussion, Mrs. Haukohl moved, seconded by Mr. Mitchell and carried unanimously for approval, in accordance with the "Staff Report and Recommendation".***

• **PO-12-OCOT-18 (Bertrand's On the Point) Town of Oconomowoc, Sections 35 and 36**

Mr. Fruth pointed out the location of the property at N52 W35002 Lake Drive in the Town of Oconomowoc on the aerial photograph and indicated the request was tabled at the February 21, 2013 meeting to allow Staff time to research appropriate decibel or sound control options for regulation of live music and possible digital sign brightness controls.

Mr. Fruth stated there were several issues Staff was asked to research at the last meeting, specifically sound control relative to live music and digital sign brightness. Other issues raised were related to limiting outdoor restaurant and bar service after certain hours and the employee parking issue. Mr. Fruth noted that proposed Condition No. 24 did contain an error and Staff's intent was to state "after 10:00 p.m. Friday and Saturday" rather than Saturday and Sunday. Mr. Fruth continued that several sources were researched regarding the noise issue. Staff looked at noise ordinances in several counties in the state and most of them have generalized provisions, such as the Town of Oconomowoc has stating "noise shall be kept to a reasonable level and if there is a problem the Town's Police Dept. should resolve it". Generally noise control is an issue more commonly dealt with in larger cities. Therefore Staff reviewed several large cities and urban municipal noise ordinances and found that they typically regulate dBA between 45 and 60. The American Planning Association mentions that 55 dBA is the equivalent of a refrigerator running. 50 dBA has been cited in the State's wind citing regulations and Staff felt it was a reasonable limit. The initial report did not have a limit and Staff is recommending the 50 dBA as a condition. Mr. Fruth noted that the Town does possess a decibel reader; therefore the police department will be able to document noise levels. He responded to the comments made about complaints and clarified that the County Staff had not received complaints about noise on the property until the pending application was filed with the Planning Dept. If the neighbors feel they are not getting a response from the police, they should let the Town Planner and County Staff know, so that they can assist in resolving the matter.

Mr. Fruth stated the Staff is also recommending the outdoor food and beverage service be limited to 9 p.m. on weeknights and 10:00 p.m. on weekends. Staff felt a sign prohibiting drinks on the deck after 9 p.m. or 10 p.m. may not be effective as people will likely still congregate outside and smoke.

Mr. Fruth added Staff researched sign brightness and it proved to be a difficult issue. Staff checked with sign companies, sign advocacy groups and other organizations. He noted that Staff is recommending 5,000 nits daytime measurement and 500 nits night time feeling it is important to differentiate between day and night brightness. After speaking with a representative from a sign company, the representative was comfortable with the nit level. Conditions include that the settings need to be verified by the installer prior to the permit issuance, there be an ambient light monitor, it can't be more than 20 sq. ft., no animation or scrolling, a maximum of three different messages a day are allowed, there can be no flashing and the sign can only be on during business hours. If the Town or County feel it is too bright, they can ask for it to be adjusted.

Mr. Fruth commented on the employee parking concerns and stated that the Site Plan did not designate an employee parking area. Mr. Peregrine spoke that Mr. Herrmann did not place the condition in his recommendation as there was no way to enforce it.

Ms. Barrows referred to Mr. Miele's recommendation regarding Condition No. 6. She stated the County required the turn around after Mr. Bertrand submitted his Landscape Plan which showed landscaping between the parking lot and the lake. Condition No. 6 states he has to submit vegetative screening between the turnaround and road, extending as far east along W. Lake Drive as practicable. She felt the language "and between the turn around and the lake" should be included, because the turn around will be an extension of the parking lot and the landscape strip.

Mr. Siepmann asked Mr. Bertrand if he was agreeable to the conditions. Mr. Bertrand replied, he generally was but had a few concerns. He was concerned about the decibel reading at the lot line. He has had live music for the last 15 years and never have the police come to his door and told him it was too loud and to turn it down. It appears now that he is applying for the Plan of Operation he has been unduly scrutinized and feels that 50 dBA at the lot line is too low. It is equivalent to the noise of a refrigerator running. A motorcycle going past is louder than that or even people walking and talking and he wants to go on record that he feels it is too low. He noted that what is being proposed on the Conditional Use Termination application and the Site Plan and Plan of Operation is basically not any different than how he has been operating the last 15 years. He felt that any further restrictions to what already has been established and approved was unfair.

Mr. Siepmann asked if Mr. Bertrand had seen the Landscaping Plan that Mr. Puestow submitted at the beginning of the meeting. He replied, he had not, but felt it could be investigated. He would prefer it not be written into any part of this proposal though. He stated that he is willing to work with his neighbors to resolve any issues if they are willing to work with him.

Mr. Bertrand asked if the last parking stall on the northeast corner were to be hashed out as not available to park, would then the space behind the parking space be acceptable as a turnaround, as opposed to constructing more asphalt to the north and west. Chairman Peregrine replied that there is no location specified in the conditions. Mrs. Barrows added that could be part of the Staff's review.

***Mrs. Haukohl moved, seconded by Mr. Siepmann and carried unanimously to place the matter back on the table.***

***After discussion, Mrs. Haukohl moved, seconded by Mr. Siepmann, and carried unanimously for approval, as conditioned, in accordance with the "Staff Memorandum" with Conditions No. 6 and 24 amended to read:***

6. A turnaround shall be constructed at the northwesterly end of the parking lot or an area shall be marked at the northwesterly end of the existing parking lot for turnaround purposes. A Parking Plan identifying an appropriate turnaround and vegetative screening between the turnaround and road, extending as far east along W. Lake Drive as practicable and between the turnaround and lake, shall be submitted to the Town Planner and Waukesha County Planning and Zoning Division Staff for review and approval prior to the improvements being installed. The turnaround improvements and landscaping shall be completed no later than June 15, 2013.
24. The hours of operation are limited to 11:00 a.m. to bar time. No food or alcohol shall be served outside (deck, patio, etc.) after ~~10:00~~ 9:00 p.m. Sunday through Thursday and after 10:00 p.m. Friday and Saturday ~~and Sunday~~".

#### **ADJOURNMENT**

***With no further business to come before the Commission, Mr. Siepmann moved, seconded by Mr. Ruf to adjourn at 2:35 p.m.***

Respectfully submitted,

***Pat Haukohl***

Pat Haukohl  
Secretary

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